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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,121	01/20/2004	Takami Ito	480213.401	3954

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EXAMINER

VALENTI, ANDREA M

ART UNIT PAPER NUMBER

3643

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/762,121

Applicant(s)

ITO, TAKAMI

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2005.
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1-7 and 9 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☒ None of:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
 4) ☐ Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____.
 5) ☐ Notice of Informal Patent Application (PTO-152)
 6) ☐ Other: _____

DETAILED ACTION

Priority

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Japan on 10 March 2003. It is noted, however, that applicant has not filed a certified copy of the Japanese JP 2003-063448 application as required by 35 U.S.C. 119(b).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, and 4-7 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,597,221 to Adair et al.

Regarding Claim 1, Adair teaches a flower ornamental assembly comprising a flowerpot (Adair Fig. 2 #5); a support post (Adair Fig. 2 #3) having a lower part buried in the ground or fixed to the pound with a fixing device so as to be erected upward (Adair Fig. 1); a flower ornament pot (Adair Fig. 2 #6) having at the upper end an opening for accommodating the flowerpot and having at the lower end a through-hole through which the support post is inserted; and a tilt preventive member (Adair Fig. 2 #4) placed in the flower ornament pot around the support post in a situation that the support post is inserted through the through-hole of the flower ornament pot, for cooperating with the support post to erect and support the flower ornament pot.

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Regarding Claim 6, Adair teaches a flowerpot (Adair Fig. 2 #5); a support post (Adair Fig. 2 #3) having a lower part buried in the ground or fixed to the ground with a fixing device so as to be erected upwards (Adair Fig. 1); and a flower ornament pot (Adair Fig. 2 #6) having at the upper end an opening for accommodating the flowerpot and having at the lower end a through-hole through which the support post is inserted, wherein the flower ornament pot has a hollow tubular part integrally erected upward from the through-hole (Adair Fig. 2 #4), and the flower ornament pot is erected and supported with the support post inserted in the tubular part.

Regarding Claims 2 and 7, Adair teaches the tilt preventive member is a filler filling a surrounding of the support post inside the flower ornament pot (Adair abstract last 2 lines teaches that earth (i.e. filler) is placed in the "flowerpot" which surrounds Adair element #4 and since the "flowerpot" rests in the "flower ornament pot" the filler is inside the "flower ornament pot").

Regarding Claim 4, Adair teaches a height adjusting piece interposed between the flower ornament pot and the ground for adjusting a height position of the flower ornament pot (Adair Fig. 1 the legs of element #2).

Regarding Claim 5, Adair teaches a pedestal (Adair Fig. 2 #2) integrally fitted (i.e. connected via Adair Fig. 2 #11)) to the lower end of the flower ornament pot (Adair Fig. 2 #6), wherein the pedestal has a hollow space (Adair Fig. 2 #3 comes up through element #2) communicating with the through-hole of the flower ornament pot for inserting the support post.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,450,692 to Ruibal.

Regarding Claim 1, Ruibal teaches a flower ornamental assembly comprising a flowerpot (Ruibal Fig. 1 #12); a support post (Ruibal Fig. 1 #14) having a lower part buried in the ground or fixed to the pound with a fixing device so as to be erected upward (Ruibal Fig. 2 #36 and 38); a flower ornament pot (Ruibal Fig. 1 #17) having at the upper end an opening for accommodating the flowerpot and having at the lower end a through-hole (Ruibal #36) through which the support post is inserted; and a tilt preventive member (Rubial #16) placed in the flower ornament pot around the support post in a situation that the support post is inserted through the through-hole of the flower ornament pot, for cooperating with the support post to erect and support the flower ornament pot.

Regarding Claim 2, Ruibal teaches the tilt preventive member is a filler (i.e. soil/growth medium Ruibal Fig. 4 plants are planted in #17) filling a surrounding of the support post inside the flower ornament pot.

Regarding Claim 3, Ruibal teaches the tilt preventive member includes: a block body having a through-hole (Ruibal #16) to allow the support post to insert in the vertical direction inside the flower ornament pot, and restraining the inclination of the flower ornament pot within a specific range; and a buffer (i.e. soil/growth medium Rubial Fig. 4 indicates that plants are planted in #17, the soil fills the spaces and Fig. 1 shows there is a space between #16 and #14 so when soil is placed in #17 it will fill this space and

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the space underneath #16) member filling a space between the block body, the flower ornament pot, and the support post.

Regarding Claim 4, Ruibal teaches a height adjusting piece interposed between the flower ornament pot and the ground for adjusting a height position of the flower ornament pot (Ruibal Fig.1 container beneath #17).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,597,221 to Adair et al in view of U.S. Patent No. 4,739,581 to Jarvis.

Regarding Claim 9, Adair is silent on a rib reinforcement member formed on the hollow tubular part. However, Jarvis teaches a rib reinforcement member formed on a hollow tubular part (Jarvis Fig. 1 #16, 15, 22, and 18). It would have been obvious to one of ordinary skill in the art to modify the teachings of Adair with the teachings of Jarvis at the time of the invention for the advantage of preventing over watering of the plants and root rot.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,597,221 to Adair et al in view of U.S. Patent No. 5,450,692 to Ruibal.

Regarding Claim 9, Adair is silent on a rib reinforcement member formed on the hollow tubular part. However, Ruibal teaches a rib reinforcement member (Ruibal Fig. 2 #16). It would have been obvious to one of ordinary skill in the art to modify the teachings of Adair with the teachings of Ruibal at the time of the invention for the advantage of providing additional stability to the structure in high winds.

Response to Arguments

Applicant's arguments with respect to claims 1-7 and 9 have been considered but are moot in view of the new ground(s) of rejection.

The examiner has illustrated in the above rejection that Adair does in fact teach both a flower pot (Adair #5) and a flower ornament pot (Adair #6). Thus applicant has not patentably distinguished over the teachings of the cited prior art.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 6,345,466.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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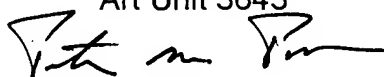
shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti
Patent Examiner
Art Unit 3643



Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600

4/1/05

31 March 2005